IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 319 of 1991

in

SPECIAL CIVIL APPLICATION No. 6213 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

PRATIKSHADEVI P SOLANKI

Versus

SHASANADHIKARI (DIRECTOR)

---

Appearance:

1. LETTERS PATENT APPEAL No. 319 of 1991

MR GIRISH PATEL for Appellant

MR PRANAV G DESAI for Respondent no.1

---

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE P.B.MAJMUDAR)

This Letters Patent Appeal is filed by the appellant against the judgment and order of the learned Single Judge passed in Special Civil Application No.6213/91. The learned Single Judge, by the impugned order, rejected the said Special Civil Application in limine, upholding the decision of respondent no.1 in not selecting the present appellant for the post of primary teacher in Balvadi under the Nagar Prathmik Shikshan Samiti,Vadodara. It is the case of the appellant in the Special Civil Application that the Nagar Prathmik Shikshan Samiti, Vadodara issued an advertisement on 2.4.1991 for filling in vacancies of teachers for Balvadies which are run by the Primary Education Committee. The aforesaid advertisement is annexed at Annexure-A to the Special Civil Application. On the basis of the said advertisement, the appellant applied for being appointed on the said post. However, ultimately, it was found that she was not possessing necessary qualifications and on that basis, she was not selected by the Committee. The said action was challenged by the appellant by filing the Special Civil Application. The learned Single Judge, while rejecting the Special Civil Application, came to the conclusion that the petitioner had not passed her S.S.C.Examination at the first trial and that she had cleared-up the said examination at the second trial and as per the norms determined by the State Government, calculation of the percentage of the marks at the S.S.C.Examination was required to be made on the basis of the said circular. Relying upon the said circular, it was observed by the learned Single Judge in the order that as per the said circular if a candidate has passed S.S.C.Examination in more than one trial, then as per Para-2 of the amended circular, some marks are required to be deducted. It was found by the learned Single Judge that it cannot be said that the aforesaid circular/guidelines framed by the Government is unreasonable in any manner. Ultimately, the said Special Civil Application was rejected at the admission stage, against which the present Letters Patent Appeal is filed.

2. At the time of hearing of this Letters Patent Appeal, it was argued by Mr. Patel, learned advocate for the appellant that the petitioner had applied for the post of teacher in Balvadi section and she having passed

S.S.C.Examination securing 42% of marks at the second trial, 1% of marks should have been deducted treating the fact that she had passed the examination at the second trial and not at the first trial. He further submitted that as per the amended circular dated 17.11.1983. which deals with the exemption part, viz., the candidate who had passed the examination by taking advantage of exemption in certain subjects, marks are required to be calculated and deducted as per the policy laid down in the said amended circular dated 17.11.1983. According to Mr. Patel, the said circular is arbitrary and unreasonable. Mr. Patel further submitted that the petitioner passed S.S.C. Examination at the second trial and, therefore, at the most, there should be deduction of 1% of marks as prescribed in the earlier circular dated 14.7.1983. It was next argued by Mr. Patel that, in any case, the circular in question is applicable in case of recruitment of primary teachers only, while in the instant case, recruitment was required for the post of pre-primary teacher and, therefore, the aforesaid circulars were not applicable at all and, therefore, on the said ground, non-selection of the appellant was not proper.

3. As against the aforesaid arguments, Mr. Desai, learned advocate, who is appearing for the Nagar Prathmik Shikshan Samiti, Vadodara, submits that the appellant, while passing the examination at the second trial, had taken the benefit of exemption in 4 subjects and at the second trial, she had appeared only in 3 subjects and therefore, as per the circular dated 17.11.1983, the subjects in which she had appeared in the first trial as well as in the second trial, are all required to be combined and thereafter considering the total number of marks obtained in all the subjects, percentage is required to be arrived at. According to his submissions, therefore, once a candidate has taken advantage of exemption and the candidate appeared in few subjects, the total subjects of the first and the second trials, all are required to be combined and considering the total number of marks obtained in the aforesaid subjects, ultimately the percentage is required to be fixed. He, therefore, submitted that the aforesaid circular is on a rational basis and is not arbitrary in any manner. He further submitted that if a candidate appears in the second trial in all subjects, he cannot be treated at par with those candidates who had appeared in few subjects by taking advantage of exemption in the second trial and, therefore, classification between the said sets of candidates is reasonable and valid. Mr. Desai further submitted that, in any case, the circular in quesdtion is

of the State Government and that the State Government is not a party in the present proceedings and, therefore, the circular cannot be set aside by this Court, especially when the necessary party, i.e. the State Government, is not joined as a party respondent to the present proceedings. Mr. Desai also submitted that even in the original Special Civil Application, there is no prayer to join the State Government as a party respondent and since the petition is not amended with appropriate prayer, the Court cannot set aside the said circular, which is also prevailing since last so-many years. Mr. Desai also further submitted that so far as applicability of the said circular is concerned, there are no recruitment rules for pre-primary teachers so far as the schools which are being run by the Primary Education Committee is concerned. It is further submitted by Mr. Desai that those candidates, who are recruited as primary teachers, are to be absorbed in the pre-primary section/Balvadies, which are being run and managed by the District Primary Education Committee. It is therefore, submitted that there is no substance in any of the contentions of Mr. Patel and the appeal deserves to be dismissed.

4. We have heard the learned advocates of both sides at length. We have gone through the petition and the affidavit-in-reply filed in the original petition. We have also considered the grounds of appeal.

5. So far as the first contention of Mr. Patel is concerned, it is required to be noted that no such point, challenging the circular in question, was raised in the original Special Civil Application. Even at the stage of Letters Patent Appeal, the appellant has not thought it fit even to ask for amendment of the original Special Civil Application and, therefore, it is an admitted fact that in the original Special Civil Application, there is no such prayer challenging the aforesaid circular, which is issued by the State Government. Apart from the said fact, it is not in dispute that the aforesaid circulars are issued by the State Government and unless the State Government is joined as a party respondent to the present proceedings, this Court cannot decide the validity of the said circular, as the State Government is the necessary party so far as the circular is concerned, as the State Government is the author of the said circular. For want of necessary party, this Court cannot decide the validity of the said circular in the present Letters Patent Appeal. Mere taking a ground in the Letters Patent Appeal cannot cure the aforesaid defect, which we have pointed out above. Even otherwise, in our view, this is

a policy decision taken by the Education Department of the State Government, regarding deduction of certain percentage in case of a candidate who has passed the examination at the second trial by taking benefit of exemption in certain subjects and the candidate who has passed the examination at the second trial without taking advantage of exemption in certain subjects. If a policy decision is taken by the State Government that certain percentage of marks is required to be deducted in a case, where a candidate had passed examination by taking benefit of exemption in certain subjects, it cannot be said that the said decision is discriminatory or arbitrary in any manner. We, therefore, agree with the view of the learned Single Judge that the said circular does not suffer from any unreasonableness or that it is arbitrary or discriminary in any manner. We, therefore, do not find any substance in the first argument of Mr. Patel.

6. So far as the contention about non-applicability of the aforesaid circulars as regards pre-primary teachers is concerned, it is required to be noted that the advertisement (which is at Annexure-A, Page-16 in the compilation) clearly provides that applications were invited by the Nagar Prathmik Shikshan Samiti,Vadodara for the purposes of recruiting teachers at the Balvadies in Gujarati/Sindhi/Hindi medium. So far as Primary Education Committee is concerned, the same is governed by the provisions of the Bombay Primary Education Act. It is not in dispute that there are no recruitment rules for pre-primary teachers in schools (Balvadies). So far as the District Primary Education Committee is concerned, the same is concerned with recruitment of primary teachers and for that purpose, applications were invited for recruitment of primary teachers for ultimately to be absorbed in Balvadies. On the basis of the said advertisement, only those candidates, who were eligible to be appointed as primary teachers, were required to be considered for such appointment. Mr. Desai, learned counsel for respondent no.1, also pointed out that even in cases where some Balvadies are required to be closed for any reason, such teachers can be absorbed in any other primary schools which are run by the Primary Education Committee and, therefore, only those qualified primary teachers, who were eligible to be appointed as primary teachers, were eligible to apply on the basis of the said advertisement and after selection, they were required to be sent in Balvadies run by the Primary Education Committee. In view of what is stated hereinabove, we are of the opinion, therefore, that the advertisement was issued only for the purpose of

recruitment of primary teachers and the person eligible to be appointed as a primary teacher was eligible to apply on the basis of the advertisement at Annexure-A. In that view of the matter, the circular in question, which is applicable for recruitment of primary teachers was applicable in full force so far as the advertisement at Annexure-A is concerned. By the aforesaid advertisement, applications were invited for the recruitment of primary teachers by the Nagar Prathmik Shikshan Samiti, Vadodara. It, therefore, cannot be said that the aforesaid circular of the Government, which is applicable only in case of recruitment of primary teachers, cannot be made applicable for the purpose of recruiting teachers in Balvadies or teachers in pre-primary section. The aforesaid contention, therefore, cannot be upheld and must be rejected.

7. Mr. Desai, learned advocate for respondent no.1, has also pointed out that at the relevant time, the Committee had prepared list of 20 selected candidates and all of them were having more than 60% marks. He submitted that even otherwise, as per the say of the appellant, she had obtained only 42% of marks and, therefore, also even if no marks were deducted, she had hardly any chance for recruitment and all the posts were filled in at the relevant time from the said select list. He submitted that even reserved candidates were also included in the said select list and in his submission, therefore, the arguments of the appellant can only be said to be academic in nature and the appellant had hardly any chance for getting appointment. However, since we are rejecting this appeal by considering arguments of Mr. Patel, learned counsel for the appellant, on both the points, as we have observed above, it is not necessary to examine further aspects in the present appeal.

Considering the facts and circumstances of the case and considering the reasonings assigned by the learned Single Judge as well as, as per the observations made by us hereinabove, we find hardly any merits in this Letters Patent Appeal. The same is accordingly required to be dismissed and is hereby dismissed with no order as to costs.

(J.M.Panchal,J.)

(P.B.Majmudar,J.)

(patel)